

TASMANIA

ANNULLED CONVICTIONS BILL 2003

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SCHEDULE 1 – NON-EXEMPT APPLICATIONS

ANNULLED CONVICTIONS BILL 2003

(Brought in by the Minister for Justice and Industrial Relations, the Honourable Judith Louise Jackson)

A BILL FOR

An Act to facilitate the rehabilitation of offenders by providing that in certain circumstances minor convictions are annulled for nearly all purposes, to impose restrictions on obtaining and disclosing information about annulled convictions and to make similar provision for quashed convictions and pardons and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the *Annulled Convictions Act 2003*.

Commencement

2. This Act commences on a day to be proclaimed.

Interpretation

3. (1) In this Act, unless the contrary intention appears –

“adult” means a person who has attained the age of 18 years;

“annulled” means –

- (a) annulled under section 6 or 8; or
- (b) quashed or set aside by a court; or
- (c) made the subject of a free or conditional pardon;

“annulled conviction” means a conviction that has been annulled;

“conviction” means a conviction recorded against a person for an offence, whether on indictment or summarily or as a result of the acceptance of an infringement notice, and whether before or after the commencement of this Act;

“imprisonment” includes detention pursuant to a detention order made under the *Youth Justice Act 1997*;

“Justice Agency” means any of the following:

- (a) the Australian Federal Police;
- (b) the police force or service of a State;
- (c) the Australian Crime Commission established by section 7 of the *Australian Crime Commission Act 2002* of the Commonwealth;
- (d) the CrimTrac Agency established on 1 July 2000 as an Executive Agency by the

Governor-General of the Commonwealth under section 65 of the *Public Service Act 1999* of the Commonwealth;

- (e) the Australian Customs Service established by section 4 of the *Customs Administration Act 1985* of the Commonwealth;
- (f) the Attorney-General for the Commonwealth or a State;
- (g) the Director of Public Prosecutions for the Commonwealth or a State;
- (h) a person employed in a Government Department or Agency of the Commonwealth or a State, or in a council, and whose primary duties include the prosecution of offences or assisting with the prosecution of offences;
- (i) the Director of Corrective Services and the equivalent entity in another State;
- (j) the Parole Board and the equivalent entity in another State;
- (k) the Registrar or administrator of a Commonwealth or State court;
- (l) the Secretary of the responsible Department in relation to the *Youth Justice Act 1997* and any entity that is responsible for the administration of discrete youth justice legislation in another State;
- (m) a prescribed body or person;

“minor conviction” means any conviction other than –

- (a) a conviction for which a sentence of imprisonment of more than 6 months is imposed; or
- (b) a conviction for a sexual offence; or
- (c) a prescribed conviction;

“official criminal record” means a record, containing information about the outcome of criminal proceedings, kept by –

- (a) a court of this State; or
- (b) a Government department or State authority within the meaning of the *State Service Act 2000*; or
- (c) a council;

“Parole Board” means the board established by section 62 of the *Corrections Act 1997*;

“person” means a natural person;

“sentence of imprisonment” includes –

- (a) any wholly suspended sentence of imprisonment; and
- (b) any suspended part of a sentence of imprisonment;

“sexual offence” means –

- (a) an offence under section 124, 125, 125A, 125B, 126, 127, 127A, 128, 129, 133, 185 or 186 of the *Criminal Code*; or

- (b) an offence under section 122 or 123 of the *Criminal Code* as in force immediately before 14 May 1997; or
- (c) an offence under section 298 or 299 of the *Criminal Code* in respect of an offence referred to in paragraph (a) or (b); or
- (d) an offence under section 8(1A)(a) or 35(3) of the *Police Offences Act 1935*; or
- (e) an offence under Part 8 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* in respect of a child abuse product, within the meaning of that Part;

“State” includes Territory;

“youth” means a person who has not attained the age of 18 years.

(2) For the purposes of this Act, where a court finds a person guilty of an offence but does not proceed to record a conviction, the finding is to be regarded as a conviction.

(3) In this Act, a reference to an annulled conviction includes a reference to –

- (a) the charge to which the conviction related; and
- (b) any action taken regarding a breach of prison discipline committed during a sentence of imprisonment imposed in relation to the conviction.

Act applies to convictions from other jurisdictions

4. (1) This Act applies not only to convictions for offences against the laws of Tasmania but also to convictions for offences against the laws of the other States, the laws of the Commonwealth and the laws of other countries.

(2) In their application to convictions for offences against the laws of other jurisdictions, the provisions of this Act may be construed with such changes as may be necessary to enable the provisions to apply to those convictions in the way that corresponds most closely to the way in which they apply to convictions for offences against the laws of Tasmania.

Act binds Crown

5. This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2 – ANNULMENT OF CONVICTIONS**Annulment of minor convictions for good behaviour**

6. (1) If a person with a minor conviction is of good behaviour for a required period, the conviction is annulled.

(2) The required period is –

- (a) if the person was an adult on the day on which the minor conviction was recorded, the 10 year period commencing on that day; or
- (b) if the person was a youth on the day on which the minor conviction was recorded, the 5 year period commencing on that day.

(3) The person is taken to be of good behaviour for the required period if, during that period, he or she is not convicted of an offence punishable by a term of imprisonment.

(4) If, during the required period, the person is convicted of an offence punishable by a term of imprisonment, the person's minor conviction is still capable of being annulled under this section but in such a case the required period in relation to the minor conviction is taken to be –

- (a) if subsection (2)(a) applies to the person in relation to the minor conviction, the 10 year period commencing on the day on which the new conviction was recorded; or
- (b) if subsection (2)(b) applies to the person in relation to the minor conviction, the 5 year period commencing on the day on which the new conviction was recorded.

(5) If, by virtue of subsection (4), the period of good behaviour required to annul the person's minor conviction is taken to be different to the applicable period specified in subsection (2), subsection (4) has the same application to the new required period as it does to the required period specified in subsection (2).

Dealing with traffic convictions

7. (1) In this section –

“non-traffic offence” means an offence other than a traffic offence;

“traffic offence” means –

- (a) an offence under the *Traffic Act 1925* or *Vehicle and Traffic Act 1999*; or
- (b) an offence under the *Passenger Transport Act 1997* or *Taxi and Luxury Hire Car Industries Act 1995*; or
- (c) an offence under Part VII of the *Local Government (Highways) Act 1982*; or
- (d) an offence under a prescribed enactment dealing with traffic or with vehicles or their use; or
- (e) a prescribed offence;

“vehicle” means a motor vehicle or trailer within the meaning of the *Vehicle and Traffic Act 1999*.

(2) Subject to subsection (3) –

- (a) a conviction for a traffic offence and any resultant sentence of imprisonment are to be

disregarded in calculating, under section 6, the required period for a conviction for a non-traffic offence; and

- (b) a conviction for a non-traffic offence and any resultant sentence of imprisonment are to be disregarded in calculating, under section 6, the required period for a conviction for a traffic offence.

(3) A conviction for an offence against any of the following laws is relevant in calculating, under section 6, the required period for any conviction (whether for a traffic offence or non-traffic offence):

- (a) section 167A or 167B of the *Criminal Code*;
- (b) section 4, 6 or 14 of the *Road Safety (Alcohol and Drugs) Act 1970*;
- (c) section 32(1), (2A) or (2B) of the *Traffic Act 1925*.

Annulment of convictions for spent offences

8. A person's minor conviction for an offence is annulled if –

- (a) the offence has ceased by the operation of any law to be an offence; and
- (b) the offence is prescribed as being an offence to which this section applies.

Effect of annulment

9. (1) If a person's conviction is annulled –

- (a) the person is not required to disclose the annulled conviction to any other person; and
- (b) the annulled conviction is taken not to form part of the person's official criminal record; and
- (c) a question about the person's criminal history is taken not to refer to the annulled conviction but only to convictions, if any, that have not been annulled; and
- (d) in applying a provision of any legislation, agreement or arrangement to the person –
 - (i) a reference to a conviction, however expressed, is taken not to refer to the annulled conviction; and
 - (ii) a reference to the person's character, however expressed, is not to be taken as allowing or requiring anyone to take account of the annulled conviction; and
- (e) the annulled conviction, or the non-disclosure of the annulled conviction, is not a proper ground for –
 - (i) refusing the person any appointment, post, status or privilege; or
 - (ii) revoking any appointment, status or privilege held by the person or dismissing the person from any post.

(2) Subsection (1) does not apply to the proceedings of a court or to the making of a decision by a court, including a decision about sentencing, but a court that receives evidence of an annulled conviction may take such steps as are reasonably available to it to prevent or restrict the dissemination of that evidence if the court, having

regard to the object of this Act, considers it appropriate to do so in the circumstances.

(3) Subsection (1) does not apply to the proceedings of the Parole Board or to the making of a decision by the Parole Board.

(4) Subsection (1) does not apply to –

- (a) an application for an appointment, post, status or privilege referred to in Schedule 1; or
- (b) an application for registration or enrolment associated with or required for the gaining of any such appointment, post, status or privilege.

Annulled convictions cannot be revived except by order of court

10. (1) A minor conviction that has been annulled under section 6 or 8 is not capable of being revived except by order of a court in accordance with this section.

(2) Any court may order that a minor conviction annulled under section 6 is revived if the offender is subsequently convicted on one or more occasions of the same offence as that to which the annulled conviction relates and the court is satisfied, having regard to the nature of the offence and such other matters as the court considers relevant in the circumstances, that it would be futile or not in the public interest for the person to continue to have the benefit of the annulment.

(3) Any court may order that a minor conviction annulled under section 6 or 8 is revived if the offender is subsequently convicted of an offence and the court is satisfied, having regard to the nature of the offence, the weight it has given to the factors of deterrence and

punishment in sentencing the person for the offence and such other matters as the court considers relevant in the circumstances, that it would be in the public interest for the annulled conviction to be revived.

(4) The Supreme Court may order that a minor conviction annulled under section 6 or 8 is revived if the offender is subsequently declared to be a dangerous criminal under section 19 of the *Sentencing Act 1997* and the court is satisfied, having regard to the safety of the public or any person and such other matters as the court considers relevant in the circumstances, that the annulled conviction should be revived.

(5) If an annulled conviction is revived as provided by this section, this Act applies as if it had never been annulled.

Offences of improper disclosure

11. (1) A person must not threaten to disclose information about another person's annulled conviction.

Penalty: Fine not exceeding 50 penalty units.

(2) A person with access to official criminal records must not, without lawful authority, disclose any information about another person's annulled conviction held in those records without the consent of that other person.

Penalty: Fine not exceeding 50 penalty units.

(3) It is not an offence under subsection (2) for a Justice Agency in the proper discharge of the Agency's functions (or for a person who works for a Justice Agency acting in the course of his or her duty) to release information about a person's annulled conviction to –

- (a) a court; or
 - (b) another Justice Agency to enable it to discharge, as the case requires, its legitimate enforcement, prosecutorial, administrative, penal, rehabilitative or other functions or to carry out related research; or
 - (c) a person or body that, pursuant to section 9(4), seeks the information for the purpose of making a determination in respect of –
 - (i) an application for an appointment, post, status or privilege referred to in Schedule 1; or
 - (ii) an application for registration or enrolment associated with or required for the gaining of any such appointment, post, status or privilege; or
 - (d) a person carrying out research into sentencing, criminal justice or related matters, whether for academic, professional or other purposes; or
 - (e) the Tasmania Law Reform Institute or a law reform body of the Commonwealth or another State; or
 - (f) a prescribed person.
- (4)** It is not an offence under subsection (2) for –
- (a) an archive or library (or a person who works in an archive or library acting in the course of his or her duty) to release, in accordance with its normal procedures, material containing information about annulled convictions to a member of the public or to another archive or

library if it is material that is normally available for public use; or

- (b) a court (or a registrar, administrator or other officer of a court acting in the course of his or her duty) to release, in accordance with the court's normal procedures, material containing information about annulled convictions to a member of the public if it is material that is normally available for public use.

(5) It is a defence to a charge for an offence against subsection (2) to show that the defendant acted in good faith in the honest belief that –

- (a) he or she had lawful authority to disclose the information; or
- (b) the conviction had not been annulled; or
- (c) the convicted person had consented to the disclosure of the information.

Other offences

12. (1) A person must not fraudulently or dishonestly obtain, or attempt to obtain, information about another person's annulled conviction from an official criminal record.

Penalty: Fine not exceeding 50 penalty units.

(2) A person must not take an annulled conviction into account for a purpose not authorised by this Act.

Penalty: Fine not exceeding 50 penalty units.

PART 3 – MISCELLANEOUS**Royal prerogative of mercy not affected**

13. Nothing in this Act is to be taken as affecting the Royal prerogative of mercy.

Integrity of official criminal records

14. Nothing in this Act is to be taken as authorising or requiring any person to destroy, cull or edit any documents containing criminal records.

Prior lawful acts not affected

15. Nothing in this Act is to be taken as affecting anything lawfully done before a conviction is annulled.

Regulations

16. (1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may provide that this Act, or a specified provision of it, does not –

- (a) apply to specified convictions, persons or circumstances; or
- (b) apply to specified official criminal records; or
- (c) affect a specified law or specified provisions of a specified law.

(3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

Provisions of Act that may be amended by order

17. (1) The Governor, by order, may amend section 3(1) as follows:

- (a) by inserting, in the definition of “Justice Agency”, a paragraph containing the name of another Justice Agency or the name of a new Justice Agency;
- (b) by omitting a paragraph from the definition of “Justice Agency” if the Justice Agency specified in that paragraph ceases to exist;
- (c) by omitting a paragraph from the definition of “Justice Agency” and substituting a new (corrected) paragraph if the name of the Justice Agency specified in that paragraph is changed.

(2) The Governor, by order, may amend Schedule 1 by doing any one or more of the following:

- (a) inserting a new item in any Part of the Schedule;
- (b) omitting an item from any Part of the Schedule;
- (c) omitting an item from any Part of the Schedule and substituting a new item.

(3) The provisions of sections 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an

order under this section as if the order were regulations within the meaning of that Act.

Administration of Act

18. Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice and Industrial Relations.

SCHEDULE 1 – NON-EXEMPT APPLICATIONS

Section 9(4)

PART 1 – JUDICIAL AND LEGAL

1. Judge, master, magistrate, registrar, administrator or sheriff of a Commonwealth or State court.
2. Solicitor-General for the Commonwealth or a State.
3. Director of Public Prosecutions for the Commonwealth or a State.
4. A position in a Government Department or Agency of the Commonwealth or a State, the primary duties of which position include the prosecution of offences or assisting with the prosecution of offences.
5. Justice of the Peace for Tasmania.
6. Admission as a legal practitioner under Part 5 of the *Legal Profession Act 1993*.

PART 2 – ENFORCEMENT

1. Member of the Australian Federal Police, Tasmania Police or the police force or service of another State.
2. Member or employee of the Australian Crime Commission established by section 7 of the *Australian Crime Commission Act 2002* of the Commonwealth.
3. Member or employee of the CrimTrac Agency established on 1 July 2000 as an Executive Agency by the Governor-General of the Commonwealth under section 65 of the *Public Service Act 1999* of the Commonwealth.

4. Officer of the Australian Customs Service established by section 4 of the *Customs Administration Act 1985* of the Commonwealth.

5. Appointment as an authorised officer within the meaning of the *Traffic Act 1925*.

PART 3 – PRISONS AND PAROLE

1. Director of Corrective Services or an equivalent office in another State.

2. Corrections or probation officer or an equivalent office in another State.

3. Member of the Parole Board or member of an equivalent entity in another State.

PART 4 – YOUTH JUSTICE

1. Youth justice worker within the meaning of the *Youth Justice Act 1997*.

2. State Service employment in so far as the person employed performs duties relating to the administration of the *Youth Justice Act 1997*.

3. Engagement under a contract for service to perform duties relating to the administration of the *Youth Justice Act 1997*.

PART 5 – RACING AND GAMING

1. Member of the Tasmanian Gaming Commission established by section 123 of the *Gaming Control Act 1993*.

2. Licence, of any kind, under the *Gaming Control Act 1993*.
3. Registration as a bookmaker or bookmaker's clerk under the *Racing Regulation Act 1952*.
4. Appointment as a stipendiary steward under the *Racing Regulation Act 1952*.

PART 6 – EDUCATIONAL AND CHILD-RELATED

1. Teacher, teacher's aide or member of the non-teaching staff of a kindergarten, school, college or other place of primary or secondary education, whether in this State or elsewhere in the Commonwealth.
2. Licence or registration under the *Child Care Act 2001*.
3. Provider, in any capacity, of child-care or child-minding facilities elsewhere in the Commonwealth.
4. Adoptive or foster parent, whether in this State or elsewhere in the Commonwealth.
5. Member of a safety house scheme organised by the Safety House Association of Tasmania.
6. School-crossing patrol officer.
7. Authorised officer within the meaning of the *Children, Young Persons and Their Families Act 1997*.
8. State Service employment in so far as the person employed performs duties relating to the administration of the *Children, Young Persons and Their Families Act 1997*.
9. Engagement under a contract for service to perform duties relating to the administration of the *Children, Young Persons and Their Families Act 1997*.

PART 7 – DRUGS AND POISONS

1. Member of the Tasmanian Poppy Advisory and Control Board.
2. State service employment in so far as the person employed assists, or performs duties relating to, the Tasmanian Poppy Advisory and Control Board.
3. Engagement under a contract for service to perform work for or on behalf of the Tasmanian Poppy Advisory and Control Board.
4. Appointment as an analyst for the purposes of the *Poisons Act 1971*.
5. Licence of any kind or category under the *Poisons Act 1971*.
6. Employment, or engagement under a contract of service, by the holder of a grower's or manufacturer's licence under Part V of the *Poisons Act 1971*.

PART 8 – OTHER

1. Auditor-General or Deputy Auditor-General for Tasmania or a member of the Tasmanian Audit Department.
2. Member of the Tasmania Fire Service or of a fire-fighting service of another State.
3. Licence, of any kind or category, under the *Firearms Act 1996*.
4. Driver licence or ancillary certificate under the *Vehicle and Traffic Act 1999*.